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**APR 02 2007**

In re Application of  
Brian Samuel BEAMAN et al.  
Application No. 09/921,867  
Filed: August 3, 2001  
Attorney Docket No. YOR919930028US6

**OFFICE OF PETITIONS**

:  
: DECISION ON PETITIONS  
: UNDER 37 CFR 1.182 AND  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the petitions filed May 5, 2006 under 37 CFR 1.182 requesting expedited consideration of the petition under 37 CFR 1.78(a)(3) filed May 5, 2006, and under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition under 37 CFR 1.182 is **GRANTED**.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner files the instant petition relying upon an amendment filed April 2, 2002. The amendment submitted April 2, 2002 as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of applicant's remarks and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that

37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3)<sup>1</sup>.

Petitioner's Deposit Account No. 09-0468 has been charged \$1770 (\$400 for the petition under 37 CFR 1.182 and \$1370 for the petition under 37 CFR 1.78(a)(3)).

Further correspondence with respect to this matter should be addressed as follows:


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Any inquiries concerning this decision may be directed to David Bucci at (571) 272-7099. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being to Technology Center Art Unit 3729 for consideration of the petition filed May 5, 2006 under 37 CFR 1.103 to defer examination.

  
David Bucci  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).